

ORIGINAL

92-116/ RECEIVED
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Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re
UHURU COMMUNICATIONS, INC.
WICO(FM), Binghamton, New York

) MM Docket No. 92-116/1
)
) File No. BRED-910230WF
)
)

Renewal of License of
Station WUCI-FM
Binghamton, New York

)
)
) File No. BPED-910501MB
)
)

WSKG PUBLIC TELECOMMUNICATIONS
COUNCIL

For a Construction Permit
for a New FM station
Binghamton, New York

)
)
) File No. BPED-910501MC
)
)

ARROWHEAD CHRISTIAN CENTER

For a Construction Permit
for a New FM station
Binghamton, New York

To: Administration Law Judge
Arthur I. Steinberg

ORIGINAL
FILE

MOTION TO DISMISS

Arrowhead Christian Center ("Arrowhead") and WSKG Public Telecommunications Council ("WSKG") by their undersigned counsel and pursuant to §73.3568(b) of the Commission's rules respectfully requests that the presiding officer dismiss the application of Uhuru Communications Inc. ("Uhuru") for renewal of license of station WUCI-FM, Binghamton, New York. Uhuru has failed to prosecute its application in violation of orders of the presiding officer and of the Commission.

The Commission in the Hearing Designation Order, DA 92-609, released June 8, 1992 has already added an issue against Uhuru for keeping its licensed facility off the air "for an extended period of time" (since July 1, 1991) "without authorization".

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That same lack of performance marks Uhuru's efforts in this proceeding since designation. In the same order, the commission directed all three parties to file to submit certain environmental amendments to their applications. In an Order Prior to Prehearing Conference, FCC 92M-754, the presiding officer directed the parties to confer by July 31, 1992 for the purposes of 1) exploring settlement, including possible agreement on shared-time arrangements, 2) reaching agreement on the scope of the issues to be tried and 3) working out acceptable joint document requests and a schedule for depositions. Uhuru has violated both orders.

A. Uhuru Violated The Terms Of The Prehearing Order

All three parties, through their counsel, agreed to meet on July 22, 1992 at the offices of Dow, Lohnes & Albertson to comply with the presiding officer's order. Originally scheduled for July 21, 1992, at the request of counsel the meeting was moved to July 22 at 10:00 a.m. at the same location in order to accommodate Uhuru. At the appointed time and place Arrowhead and WSKG met, but no representative of Uhuru appeared. A call was placed to counsel for Uhuru at approximately 10:20 a.m. whereupon he informed counsel for the other two parties that he was withdrawing his appearance and that no representative of Uhuru would be present.

Section 73.3568(b) provides that an application can be dismissed with prejudice for failure to prosecute or failure to respond to official correspondence. Commission precedent establishes that failure to abide the orders of a presiding

officer is a sufficient reason to dismiss an application.

Opportunity Broadcasting of Shreveport, 69 R.R. 2d 1226 (Rev. Bd. 1991). Nor does the Commission permit an applicant to lay the blame on withdrawing counsel where the applicant has notice. Id.

It is respectfully submitted that Uhuru has failed to abide an order of the presiding judge, an order in the normal course that would be mailed both to counsel and the applicant. The presiding officer ordered the parties to meet so that this proceeding could get underway in an orderly manner. A non-commercial, renewal case is not commonplace and it is particularly important that the parties abide the judge's order to reach common ground on the scope of the issues as well as discovery, not to mention settlement. Moreover, Arrowhead and WSKG have simply wasted their time if Uhuru's unexplained failure to participate at the scheduled meeting goes unpunished. But, it is much more than the private interests of the two competitors that is at stake here. Arrowhead and WSKG cannot, without the participation of Uhuru comply with the presiding officer's order. There simply can be no agreements on the scope of the issues and discovery without Uhuru's participation and there certainly can be no meaningful settlement discussions.

B. Uhuru Did Not Abide The Hearing Designation Order

All three parties to this proceeding were ordered by the Commission's Hearing Designation Order to submit an environmental assessment pursuant to Section 1.1311 of the Commission's rules. While both Arrowhead and WSKG met the 30 day deadline mandated by the Hearing Designation Order, Uhuru failed to do so.

C. Uhuru's Application Should Be Dismissed

Uhuru's application should be dismissed with prejudice to permit Arrowhead and WSKG to proceed in this case in an orderly manner. Uhuru, whose station has now been off the air without permission for a year, deserves no special grace, it has failed to abide an order of the presiding officer as well as an order of the Commission.

Respectfully submitted,

ARROWHEAD CHRISTIAN CENTER

By: William H. Crispin
William H. Crispin

VERNER, LIIPFERT, BERNHARD,
McPHERSON & HAND, CHARTERED
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301
Attorneys for Arrowhead
Ministries, Inc.

WSKG PUBLIC TELECOMMUNICATIONS

By: Todd D. Gray by WHC
Todd D. Gray with permission

DOW, LOHNES & ALBERTSON
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
Attorneys for WSKG Public
Telecommunications

Dated: July 27, 1992

CERTIFICATE OF SERVICE

I, Beverly J. Magnone, a secretary in the law firm of Verner, Lippfert, Bernhard, McPherson & Hand, Chartered, do hereby certify that a true and correct copy of the foregoing "MOTION TO DISMISS" was mailed first-class, postage prepaid, this 27th day of July, 1992 to the following:

* Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 228
Washington, D.C. 20054

* Dennis Williams
Chief, FM Branch
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 332
Washington, D.C. 20554

* Charles E. Dziedzic
Chief, Hearing Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

* Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 350
Washington, D.C. 20554

James L. Winston
Rubin, Winston, Diercks,
Harris & Cooke
1730 M Street, N.W., Ste. 412
Washington, D.C. 20036
Attorneys for UHURU Communications, Inc.

Gladys Cordeaux
Chairman of the Board
UHURU Communications, Inc.
P.O. Box 1492
56 Whitney Avenue
Binghamton, NY 13902

Richard D. Marks
Todd D. Gray
Margaret L. Miller
Dow, Lohnes & Albertson
1255 23rd Street, N.W., Ste. 500
Washington, D.C. 20037
Attorneys for WSKG Public Telecommunications


Beverly J. Magnone

*Hand-Delivered